



William Donald Schaefer
Governor
Mark L. Wasserman
Secretary

Board of Appeals
1100 North Eutaw Street
Baltimore, Maryland 21201
Telephone: (410) 333-5032

- DECISION -

Claimant:
GERARD G. BROOKER

Decision No.: 0255-1-BR-94

Date: August 3, 1994

Appeal No.: 9321732

Employer:
LOCUST LANE FARMS INC

S.S. No.:

L.O. No.: 08

Appellant: Board Assumed Jurisdiction

Issue: Whether the claimant was able, available and actively seeking work within the meaning of the Maryland Code, Labor and Employment Article, Title 8 Section 903.

- NOTICE OF RIGHT OF APPEAL TO COURT -

You may file an appeal from this decision in the Circuit Court for Baltimore City or one of the Circuit Courts in a county in Maryland. The court rules about how to file the appeal can be found in many public libraries, in the Maryland Rules of Procedure, Title 7, Chapter 200.

The period for filing an appeal expires: September 2, 1994

REVIEW ON THE RECORD

Upon review of the record in this case, the Board of Appeals adopts the findings of fact of the Hearing Examiner. However, the Board concludes that these facts warrant a different conclusion of law.

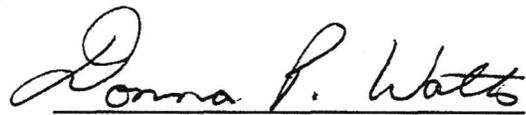
Section 903 of the Labor and Employment Article of the Annotated Code of Maryland requires that a claimant be able, available and actively seeking work when he opens his claim for unemployment benefits. The claimant was scheduled for surgery on the day he opened his claim. Therefore it was impossible for the claimant to be able, available and actively seeking work that day.

The claimant was not able, available and actively seeking work until he was released by his physician to return to work on November 8, 1993.

DECISION

The claimant was not able, available and actively seeking work within the meaning of Section 8-903 when he opened his claim on September 27, 1993. He is disqualified from receiving benefits from the week beginning September 26, 1993 through the week ending November 6, 1993.

The decision of the Hearing Examiner is modified.



Donna P. Watts, Associate Member



Clayton A. Mitchell, Sr., Associate Member

kjk

Copies mailed to:

GERARD G. BROOKER
LOCUST LANE FARMS INC
LOCUST LANE FARMS INC
Local Office - #08

UNEMPLOYMENT INSURANCE APPEALS DECISION

GERARD G. BROOKER

Before the:

SSN

Claimant

vs.

LOCUST LANE FARMS INC

Employer/Agency

Maryland **Department of Economic and
Employment Development**
Appeals Division
1100 North Eutaw Street
Room 511
Baltimore, MD 21201
(410) 333-5040

Appeal Number: 9321732
Appellant: Claimant
Local Office: 08 / Annapolis

November 12, 1993

For the Claimant: PRESENT

For the Employer:

For the Agency: NIKKI GLADDING

ISSUE(S)

Whether the claimant is able to work, available for work and actively seeking work within the meaning of the MD Code Annotated, Labor and Employment Article, Title 8 Sections 903 and 904.

FINDINGS OF FACT

Claimant opened claim for unemployment insurance benefits, establishing a weekly benefit amount of \$223.00 and an effective date of September 26, 1993. He had injured his back in 1991 suffering from a ruptured disc. Claimant reinjured his back in December, 1992 and had to undergo surgery at that time. The surgery alleviated the discomfort but Claimant again began to experience discomfort in late August 1993. Although he was experiencing pain, Claimant was able to continue working until September 25, 1993. He filed a claim for benefits on Monday morning, September 27, 1993 and was subsequently admitted to the hospital that afternoon for surgery on his back. Claimant was able to work and available for work until the time of his surgery, but became unable to work as a result of the surgery. He has completed his recuperation from the back surgery, is able to work as of the date of the hearing in this case and has been released by his physician to return to work on November 8, 1993.

CONCLUSIONS OF LAW

The Maryland Code, Labor and Employment Article, Title 8, Section 1003 provides that eligibility for unemployment insurance benefits is predicated upon, among other things, the requirement that a Claimant be able to work, available for work and actively seeking work. Section 907 allows a conditional exception to this requirement if a claimant's failure to comply is the result of illness or disability, but only if the illness or disability commenced after Claimant opened his claim and registered for work.

Claimant had experienced recurring back problems over the years, but was able to work despite this problem. Discomfort from these problems resurfaced in late August 1993, but Claimant was able to continue working despite the discomfort. It is concluded that Claimant's inability to work was the result of the surgery performed upon him on the afternoon of September 27, 1993, and not the result of his back discomfort. Consequently, Claimant's inability to work commenced after he opened his claim and registered for work. Claimant is therefore, eligible for the Section 907 exception to the able and available requirement of Section 903.

DECISION

It is held that Claimant was in claim status at the time of the commencement of his inability to work within the meaning of the Maryland Code, Labor and Employment Article, Title 8, Section 907. The denial of benefits imposed pursuant to Section 903 is reversed, and benefits are allowed, provided Claimant is otherwise in compliance with the Maryland Unemployment Insurance Law.

The determination of the Claims Examiner is reversed.



K. C. Sippel, ESQ.
Hearing Examiner

Notice of Right of Further Appeal

Any party may request a further appeal either in person or by mail which may be filed in any local office of the Department of Economic Employment Development, or with the Board of Appeals, Room 515, 1100 North Eutaw Street, Baltimore, MD 21201. Your appeal must be filed by November 29, 1993.

Note: Appeals filed by mail are considered timely on the date of the U.S. Postal Service postmark.

Date of hearing: November 5, 1993
ICE/Specialist ID: 08003
Seq. No. :003
Copies mailed on November 12, 1993 to:

GERARD G. BROOKER
LOCUST LANE FARMS INC
LOCAL OFFICE #08